

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 710, 712, 720, and 740

[FHWA Docket No. 95-18]

RIN 2125-AC17

Right-of-Way Program Administration;
Removal of Obsolete and Redundant
RegulationsAGENCY: Federal Highway
Administration (FHWA), DOT.ACTION: Interim final rule; request for
comments.

SUMMARY: This document removes regulations concerning right-of-way program administration which are obsolete and/or redundant. This action is in response to the President's Regulatory Reinvention Initiative. The removed regulatory provisions are duplicated or addressed elsewhere in FHWA/DOT regulations or are unnecessary for current programs.

DATES: This interim rule is effective May 28, 1996. Comments are due on or before June 24, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95-18, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Johnson, Office of Real Estate Services, (202) 366-2020, or Mr. Reid Alsop, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1371. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 6, 1995, the FHWA published in the *Federal Register* (60 FR 56004) an advance notice of proposed rulemaking (ANPRM) requesting comment on the content of 23 CFR parts 710 through 740. Twenty comments were received from individuals (2), private groups or organizations (2), and State transportation agencies (16).

Based on the responses to the ANPRM and other factors, the FHWA concludes that a comprehensive revision of the Right-of-Way related regulations is required. While such a revision is appropriate, several other regulatory

revisions are currently underway that will, either directly or indirectly, affect right-of-way considerations. The FHWA will coordinate development of a notice of proposed rulemaking (NPRM) governing right-of-way/real estate programs with other related regulations now under review governing new administrative procedures and environmental issues to ensure that maximum consistency with current practice is achieved.

In the interim, the FHWA has identified numerous provisions that are no longer needed and should be removed from the regulations. Four whole parts or subparts identified during the review of the regulations as no longer needed are removed by this rule. These four include:

(1) 23 CFR part 710, subpart D—Civil Rights. This subpart of the regulations contains provisions relating civil rights under Title VI of the Civil Rights Act of 1964 to the right-of-way acquisition function. This subpart was published in 1974 and was based on provisions contained in 49 CFR part 21 issued in 1970. Since the original issuance, subchapter C—Civil Rights was added to 23 CFR. Subchapter C provides guidance and policy for implementing Title VI program requirements throughout FHWA and addresses State highway agency responsibilities in this regard. The provisions in 49 CFR part 21 and 23 CFR subchapter C contain the more current provisions relating to Civil Rights matters and are the sections of the regulations used to assess compliance. The older provisions in 23 CFR part 710, subpart D, while still relevant as guidance, are no longer needed, having been replaced by the more comprehensive provisions in 23 CFR subchapter C.

(2) 23 CFR part 712, subpart H—Land Service Facilities. This subpart contains policy guidance on Federal participation associated with land service facilities designed for access to properties affected by a highway improvement. The full control of access features associated with the Interstate system, along with the cost-to-complete funding basis for that system, necessitated regulations to assure that land service facilities (construction items) incorporated in project design were either clearly beneficial to the public or economically justified if beneficial solely to an individual property owner. The policy had existed as guidelines prior to adoption as a regulation in 1977, and has since been adopted within most State highway agencies— design development processes. The FHWA recognizes that most States now have policies meeting

the basic intent of this subpart. Current funding programs are no longer based on cost-to-complete but are limited to fixed allocations. Our program emphasis is not directed at new limited access facilities. Therefore, no current interest is served by retaining this subpart.

(3) 23 CFR part 720—Appraisal. The content in this part covers employment and contracting provisions for acquiring agencies using fee appraiser and specialist services. The current content in this part is the residual portion of regulations originally issued in 1973 that covered appraisal documentation and contracting standards. The appraisal documentation standards were incorporated into 49 CFR part 24 in 1989 as part of the effort to develop a single government-wide rule implementing the Uniform Act (Pub. L. 91-646). The employment and contracting provisions contained in this part, while still considered good practice, are no longer needed to address our current programs. States have developed their own set of procedures on how to handle contracting for services under government-wide rules issued by OMB as implemented within DOT by 49 CFR part 18.

(4) 23 CFR part 740—Relocation Assistance. This part of the regulations is a residual of a larger set originally issued in 1976 governing the implementation of the relocation program under the Uniform Act. The main portion of the regulations related to this topic was incorporated in 49 CFR part 24 in 1989. What was retained at that time was participation, organization and contracting requirements. The contracting provisions found in this part are no longer appropriate as they either duplicate similar provisions found elsewhere in 23 CFR or can be addressed through implementation of the government-wide rules on contracting for services covered by 49 CFR part 18. The participation and organizational sections in this part are also either covered elsewhere in 23 CFR or no longer relate to current programs.

The removal of the above parts and subparts is not considered a major or significant change in the basic programs of FHWA and should not be considered as a relaxation of preexisting standards, or an expansion of Federal participation limits that pertained to the subjects contained therein. The removal is solely to reduce redundancy and eliminate prescriptive portions of existing regulations that have been adopted as standardized procedures over time by State highway agencies.

Rulemaking Analyses and Notices

The FHWA is waiving prior notice and opportunity for public comment on this rule because it is considered unnecessary within the meaning of section 4(b)(3)(B) of the Administrative Procedures Act, 5 USC 553(b)(3)(B). Removal of the identified sections is unlikely to engender public comment. The FHWA believes that the promulgation of this interim rule will eliminate obsolete provisions in the CFR enhancing the ease with which these regulations can be understood by the public. Nevertheless, the FHWA is opening a public docket for this rule and providing 60 days for receipt of public comment. The FHWA will consider all comments received during this 60 day period in determining whether any revision is necessary to the rule published today.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this Interim Final Rule reduces obsolete regulatory language it will not have an adverse annual effect on the economy, interfere with the work of another agency, materially alter the budget impact of grantees, or raise novel legal or policy issues inconsistent with the principles set forth in this Executive Order. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

This rule eliminates obsolete regulatory language used in the administration of right-of-way programs, and in so doing does not add to the burdens imposed on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Number 20.205 Highway Planning and Construction. The

regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Parts 710, 712, 720, and 740

Grant programs—transportation, Highways and roads, Real property acquisition, Relocation assistance, Rights-of-way.

For the reasons set out in the preamble, and under the authority of 23 U.S.C. 315 and 49 CFR 1.48, title 23, Code of Federal Regulations, is amended as set forth below.

Issued on: April 18, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, as follows:

PART 710—RIGHT-OF-WAY—GENERAL

1. The authority citation for part 710 continues to read as follows:

Authority: 23 U.S.C. 101(a) and 315; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48 (b) and (cc) and parts 21 and 24; 23 CFR 1.32.

§§ 710.401 through 710.405 (Subpart D)—Civil Rights [Removed]

2. In part 710, subpart D, consisting of §§ 710.401 through 710.405, is removed.

PART 712—THE ACQUISITION FUNCTION

3. The authority citation for part 712 continues to read as follows:

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d–1, 4633, 4651–4655; 49 CFR 1.48 (b) and (cc) and part 24; 23 CFR 1.32.

§§ 712.801, 712.803, and 712.805 (Subpart H)—Land Service Facilities [Removed]

4. In part 712, subpart H, consisting of §§ 712.801, 712.803, and 712.805 is removed.

PART 720—APPRAISAL [REMOVED]

5. Part 720 of chapter I is removed.

PART 740—RELOCATION ASSISTANCE [REMOVED]

6. Part 740 of chapter I is removed.

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